UNITED STATES DISTICT COURT for the DISTRICT OF RHODE ISLAND

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)	Civil Action No.:
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)	COMPLAINT
)	JURY TRIAL DEMANDED
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INTRODUCTION

This is an action for copyright infringement and breach of contract against the Defendants Matt Davitt and Davitt Design Build Inc. (collectively, the "Defendants"). Defendants used, reproduced, and distributed, without authorization, architectural drawings owned by the Plaintiffs, A. Tesa Architecture, Inc. and Alec R. Tesa (collectively, the "Plaintiffs" or "Tesa"), in violation of copyrights held by Tesa and a contract between the parties.

PARTIES

- Plaintiff Alec R. Tesa is an individual with an address of 9564 Exbury Court, Parkland,
 Florida. Alec R. Tesa is a registered professional architect and the principal of A. Tesa
 Architecture, Inc.
- 2. Plaintiff A. Tesa Architecture, Inc. ("ATA") is a corporation engaged in providing architectural services organized under the laws of Delaware and with a principal place of business at 174 Bellevue Avenue, Suite 308, Newport, Rhode Island.

- Defendant Matt Davitt ("Davitt") is an individual with an address of 104 Blueberry Lane,
 Jamestown, Rhode Island. Upon information and belief, Davitt is the President and Owner of Davitt Design Build, Inc.
- 4. Defendant Davitt Design Build, Inc. ("DDB") is a Rhode Island corporation with principal place of business at 4 Frank Avenue, Suite 1A, West Kingston, Rhode Island. Upon information and belief, DDB is a for profit corporation in the business of high-end new single-family house construction.

JURISDICTION

- 5. This case arises under the copyright laws of the United States, 17 U.S.C. § 101 *et seq*. This Court has subject matter jurisdiction over these claims pursuant to 28 U.S.C. § 1338(a).
- 6. This Court has supplemental jurisdiction over the related state law claims pursuant to 28 U.S.C. §§ 1338(b) and 1367.
- 7. Venue for this Action is proper under 28 U.S.C. §§ 1400(a) and 1400(b).

FACTUAL BACKGROUND

- 8. On or about September 13, 2015, Defendants entered into a written agreement with the Plaintiffs for Plaintiffs to provide Architectural Design Services (the "Contract"). A true copy of the Contract is attached hereto as **Exhibit 1**.
- 9. In the fall of 2015, pursuant to the Contract, Plaintiffs created and delivered to DBB instruments of service in the nature of original works shown on architectural drawings ("Tesa's Designs") for two (2) custom homes to be built by DBB on Lot 9 and Lot 11 in an area defined as the Fort Greene Subdivision in Narragansett, Rhode Island (hereinafter "Lots 9 and 11").

- 10. The Contract expressly stated the Defendants were to use Tesa's Designs only to construct the two homes on Lots 9 and 11 and for no other purpose.
- 11. Under Article 7, Paragraph 7.3 of the Contract, any use of Tesa's Designs outside of Lots 9 and 11 would require prior written authorization from Plaintiffs.
- 12. Under Article 7, Paragraph 7.2, any sale, reproduction, creation of derivative works or use of Tesa's Designs without proper compensation to Plaintiffs, and without the Plaintiffs' express written consent, was strictly prohibited.
- 13. Since the fall of 2015, Defendants, without authorization, in violation of Plaintiffs' copyright and in violation of the Contract, constructed single-family homes using Tesa's Designs, such construction located at, among other places, 35 Battery Lane, Jamestown, Rhode Island; 127 Highland Drive, Jamestown, Rhode Island, and 1048 Ocean Road, Narragansett, Rhode Island. See Exhibit 2.
- 14. Defendants, without Plaintiffs' authorization, used, reproduced, and distributed Tesa's Designs as if owned by DBB on the DBB Instagram page and DBB website as recently as June 2024. Screenshots of the DDB Instagram account are attached hereto as **Exhibit 3.**
- 15. As recently as November 15, 2024, the single-family house constructed from the unauthorized use of Tesa's Designs at 35 Battery Lane, Jamestown, Rhode Island is under agreement to be sold for \$3,750,000. See **Exhibit 4.**
- 16. Defendants, without Plaintiffs' authorization, have built and sold homes constructed from Tesa's Designs and profited therefrom.
- 17. Tesa's Designs were registered in the United States Copyright Office on or about September 24, 2024, Registration Number V Au 1-534-967. A copy of Plaintiffs' Certificate of Registration, No. V AU 1-534-967 is attached hereto as **Exhibit 5.**

COUNT I (Copyright Infringement)

- 18. Plaintiffs repeat and reallege the allegations contained in paragraphs 1-16 as if fully stated herein.
- 19. Plaintiffs are the owners of all right, title, and interest in the copyright in Tesa's Designs registered in the United States Trademark Office under the "Architectural Construction Drawings and 9 Other Unpublished Works."
- 20. The Defendants, without authorization, copied, manufactured, distributed, and used Tesa's Designs to construct and then sell homes as shown by the similarity of the homes to Tesa's Designs located at, among other places, 35 Battery Lane, Jamestown, Rhode Island; 127 Highland Drive, Jamestown, Rhode Island, 1048 Ocean Road, Narragansett, Rhode Island, DavittDesignBuild.com, and social media postings by Defendants at Instagram.com/davittdesingbuild.inc; thereby infringing the copyright held by Plaintiffs in Tesa's Designs.
- 21. Defendants have profited wrongfully from the unauthorized use of Tesa's Designs and Tesa has been harmed by Defendants' wrongful conduct.

WHEREFORE, Plaintiffs request relief as set forth below.

COUNT II (Breach of Contract)

- 22. Plaintiffs repeat and reallege the allegations contained in paragraphs 1-21 as if fully stated herein.
- 23. On or around September 13, 2015, Plaintiffs and Defendants entered into the Contract, which was fully performed by Tesa.

- 24. Specifically, Tesa provided Tesa's Designs that resulted in Defendants building and selling two (2) custom homes for Lots 9 and 11.
- 25. Under the terms of the Contract, Defendants were strictly prohibited from submitting or using Tesa's Designs for any purpose other than Lots 9 and 11. The Contract strictly prohibited the sale, reproduction, creation of works derivative of Tesa's Designs for any other purpose without proper compensation to Plaintiffs, and Plaintiffs' express written consent.
- 26. Defendants breached the Contract by using Tesa's Designs without Plaintiffs' consent, reproducing and/or creating works derivative of Tesa's Designs and constructing or offering to construct for others homes based on Tesa's Design, such homes existing at, among other places, 35 Battery Lane, Jamestown, Rhode Island; 127 Highland Drive, Jamestown, Rhode Island, and 1048 Ocean Road, Narragansett, Rhode Island.
- 27. Defendants wrongfully profited by their breach of the Contract and Tesa has suffered a loss due to the breach.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs Alec R. Tesa and A. Tesa Architecture, Inc. respectfully demand the following:

- Judgment against Defendants Matt Davitt and Davitt Design Build Inc. for violation of Tesa's copyright;
- Judgment against Defendants Matt Davitt and Davitt Design Build Inc for breach of contract;
- 3. Assessment of actual and statutory damages under Count I, including but not limited to disgorgement of all profits obtained from the unauthorized use of Tesa's Designs;

- 4. Assessment of contract damages under Count II;
- 5. Pre-judgment interest;
- 6. Costs;
- 7. Attorney's fees; and
- 8. Such other relief that is just and appropriate and provided by law.

JURY DEMAND

Alec R. Tesa and A. Tesa Architecture, Inc. request a trial by jury on all issues that are so triable.

Respectfully submitted,

ALEC R. TESA and A. TESA ARCHITECTURE, INC.

By and through their attorney,

/s/ Warren D. Hutchison

Warren D. Hutchison (#5571) Freeman Mathis & Gary, LLP 10 Dorrance Street, Suite 700 Providence, RI 02903 T: (401) 519-3724

 $\underline{whutch is on @fmglaw.com}$

Dated: December 3, 2024

ARCHITECTURE

Architectural Design Services Contract

THIS AGREEMENT, Made as of September 13, 2015

BY AND BETWEEN

CLIENT/OWNER: Mr. Matt Davitt, President/Owner

Davitt Design Build Inc.

4 Frank Avenue

West Kingston, RI 02892

~and~

ARCHITECT: A. Tesa Architecture

Alec R. Tesa, AIA RI Lic. #4543

174 Bellevue Ave Suite 305

Newport, RI 02840

PROJECT: Fort Greene Subdivision, Lot 9 & Lot 11 - Narragansett RI

Custom homes to be designed for Lots 9 & 11 as shown on plan dated September 2006.

Project Scope: As discussed during the initial programmatic meeting at ATESA office 8.27.15, the project shall include architectural construction drawings for the design of two (2) custom homes in the range of between 3,000 to 5,000 square feet of interior finished living space.

Character defining elements shall be implemented as designer sees appropriate to achieve the 'shingle style' appearance and functional layout as desired by client and per precedent projects referred to (if any). All programmatic spaces and features to be determined by

Client in a collaborative fashion as discussed.

Client shall retain the right to use the completed drawings to construct the documented projects on the sites as described above in the Fort Greene Subdivision only.

ATesa Architecture will provide schematic, Design
Development and construction drawing phases as required
for permitting and construction.

ATesa Architecture will provide electrical & reflected ceiling plan drawings <u>if requested</u> for construction.

 ATesa Architecture will provide interior elevations, cabinetry design and millwork design drawings <u>if requested</u> for interior construction.

 ATESA Architecture will provide structural engineering & framing drawings as required for typical construction and site conditions.

 ATesa Architecture will provide a set of Project Specifications as required for construction.

Excluded:

Mechanical and plumbing design and drawings

 Site grading, surveying, drainage, sewer/septic, pool, landscaping (hardscape & softscape) utilities, fencing, landscaping design and drawings shall be designed & provided

174 Bellevue Ave. / Suite 301 Newport, Rhode Island 02840

Telephone: 401.608.2286 or 401.413.9321

Website: www.atesaarchitecture.com

- by others and shall be reviewed and collaborated with ATesa.
- Zoning submissions, variances, etc...

ARTICLE 1. SCHEMATIC DESIGN PHASE

Based upon the mutually agreed upon program and layout established in the Initial Meeting, A.Tesa Architecture (hereinafter called "Architect") shall prepare a set of schematic design documents for review by Mr. Matt Davit (hereinafter called "Client"). These documents shall include basic site plan, floor plans, material suggestions and exterior elevations where applicable. Drawings will be done by hand and/or using CAD drawings showing overall layout, room sizes and adjacencies.

ARTICLE 2. DESIGN DEVELOPMENT PHASE

- 2.1 The Client and Architect will review the Schematic Design Phase drawings and discuss changes, alteration, options, questions or general concerns they may have regarding the design. The Architect will then prepare a subsequent set of CAD documents showing the modified floor plans, and exterior elevations. During this phase the interior elevations & interior millwork details along with cabinetry design (if applicable) will be designed along with the preliminary electrical layouts. Client may choose to delay the start of interior elevations, millwork and electrical design drawings, so that the Architect may prepare a 'skeleton' set for permitting. Upon commencement of permitting, Architect will then begin the interior elevations, millwork, cabinetry and electrical design drawings. No delay or deferment of the interior elevations, millwork and electrical design drawings shall take place without consent from Client.
- 2.2 Additional design revisions (above & beyond the initial scope of work defined) requested by the Client will be billed on an hourly basis as Additional Services per Article 6.

ARTICLE 3. CONSTRUCTION DOCUMENTS PHASE

3.1 Based on the Client approved Design Development Documents, the Architect shall prepare the final Construction Documents consisting of 3 (three) complete sets of the following drawings: site plan, foundation plan, foundation details, floor plans, all exterior elevations, typical details and sections where required, framing plans where required, door, window and finish schedules, specifications, interior elevations, millwork details & electrical plans. The production of the construction documents shall take approximately thirty (30) business days to complete.

ARTICLE 4. REIMBURSABLE EXPENSES

4.1 Reimbursable Expenses are in addition to the compensation for the basic services rendered and shall include, but are not limited to, items such as additional sets of blueprints, long distance communication, long distance travel, postage and handling of drawings, or any other items requested by the Client.

ARTICLE 5. BILLING AND PAYMENTS

5.1 The project shall be billed at an hourly rate per the estimated hours listed below and scope referenced above. All phases of the design process will not progress without written approval from Client.

Estimated hours for the above referenced project are as follows: (estimated hours represent *one* custom home design)

• Site Plan Coordination Phase

Principal	(\$175/Hr.)	= 2-5 hours
Project Architect	(\$115/Hr.)	= 10-15 hours
Draftsman	(\$65/Hr.)	= 6-10 hours

• Schematic Design Phase

Principal	(\$175/Hr.)	= 36-40 hours
Project Architect	(\$115/Hr.)	= 30-35 hours
Draftsman	(\$65/Hr.)	= 5-8 hours

Design Development Phase

Principal	(\$175/Hr.)	= 10-14 hours
Project Architect	(\$115/Hr.)	= 55-65 hours
Draftsman	(\$65/Hr.)	= 68-80 hours

Interior Elevations/Millwork Phase (*If requested*)

Principal	(\$175/Hr.)	= 18-24 hours
Project Architect	(\$115/Hr.)	= 30-35 hours
Draftsman	(\$65/Hr.)	= 65-80 hours

• Electrical / RCP Phase (*If requested*)

Principal	(\$175/Hr.)	= 6-8 hours
Project Architect	(\$115/Hr.)	= 12-16 hours
Draftsman	(\$65/Hr.)	= 30-40 hours

Construction Document Phase

Principal	(\$175/Hr.)	= 30-36 hours
Project Architect	(\$115/Hr.)	= 82-90 hours
Draftsman	(\$65/Hr.)	= 105-120 hours

Project is 'Guaranteed Maximum Price' per project scope described above - hourly billings for all phases is <u>capped</u> at the above estimated total hours for each phase, based on the above reference scope

Any additional hours needed to complete the design phase of the project that extends beyond the number of hours estimated above shall be un-billable to the client and the design phases shall continue, uninterrupted

Detailed hourly timesheets will be provided along with bi-weekly invoices

- 5.1.1 Client shall pay A.Tesa Architecture a retainer in the amount of \$7,000 or 40 hours to begin the work. Monthly invoices will follow at the above referenced hourly rate, based on continued work performed as described in the above articles.
- 5.2 Reimbursable expenses, as described in Article 4, shall be compensated with *no* multiplier added.

ARTICLE 6. ADDITIONAL SERVICES

- 6.1 Should DAVITT provide a prospective 'typical design build buyer' for a <u>custom</u> designed home outside of the spec homes begin designed and build by DAVITT and outside the realm of this contract, Architect shall enter into a separate joint venture with DAVITT for such design/build buyers corresponding lot. Whichever lot the said prospective 'typical design build buyer' chooses, said lot shall be removed from this contract as well as the corresponding architectural fees associates with the development of such lot under this contract.
- 6.2 No Additional Services shall be undertaken without the express written consent of the Client.

ARTICLE 7. OWNERSHIP AND USE OF DOCUMENTS

- 7.1 Construction Drawings and specifications as instruments of service are and shall remain the property of <u>Architect & Client</u>, whether the project is constructed or not. The Client shall be permitted to retain copies including reproducible copies of the design documents.
- 7.2 Client may submit or distribute sealed documents for the purposes of constructing this specific project only. Any sale, reproduction, creation of derivative works based on these documents, or use of these documents without proper compensation to Architect, and the express written consent of Architect, is strictly prohibited.
- 7.3 Client shall retain the right to use the completed drawings to construct the documented project on the lots designated above, located within the Fort Greene Subdivision in Narragansett RI only. Any use of the construction drawings outside of the Fort Greene subdivision would require prior written authorization as well as adequate compensation by A.Tesa Architecture, not to be unreasonably withheld.

7.4 Drawings shall be used as instruments of service are and shall remain the property of Architect & Client, whether the project is constructed or not. The Client shall be permitted to retain copies including reproducible copies of the design documents.

The Architect shall submit Schematic Design drawings to the Client for use as instruments of Marketing, specific to the Fort Greene Subdivision in Narragansett RI only.

ARTICLE 8. TERMINATION OF AGREEMENT

- 8.1 This agreement can be terminated by either party upon (14) days written notice.
- 8.2 If the contract is terminated through no fault of the Architect, the Architect shall be compensated for all work that has been completed plus reimbursable expenses.

ARTICLE 9. ARBITRATION OF DISPUTES

Acknowledged and Agreed:

9.1 Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association under its Construction Industry Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

ARTICLE 10. ACCEPTANCE & HOLD HARMLESS AGREEMENT

Release and Hold Harmless Agreement: It is with the undersigned CLIENT'S complete understanding, that by and upon executing this contract, the CLIENT acknowledges and agrees that A. Tesa Architecture, Inc., in its efforts to organize and coordinate any Consultant(s) drawings, assumes no responsibility or liability for the accuracy, completeness, and/or performance of/by any Consultant(s) or Consultant's agents, employees, contractors, or their drawings, designs, data and/or work provided to A. Tesa Architecture, Inc. Further, by and upon executing this contract, CLIENT agrees, to the fullest extent permitted by law, to indemnify, and hold harmless A. Tesa Architecture, Inc., its officers, directors, employees and agents, from any liabilities, known or unknown, and all losses, claims, demands, damages, causes of action, costs (including reasonable attorneys' fees and costs of defense), to the extent caused by the any Consultant(s) drawings, designs, data, work, or negligent acts, errors or omissions, performance or lack of performance by the Consultant(s), Consultant's agents, employees, contractors, or anyone for whom the Consultant(s) is/are legally responsible.

Alec R. Tesa, AIA A.Tesa Architecture	Date
Mr. Matt Davitt, Owner Davitt Design Build, Inc.	 Date

Q







DAVITT

ATESA

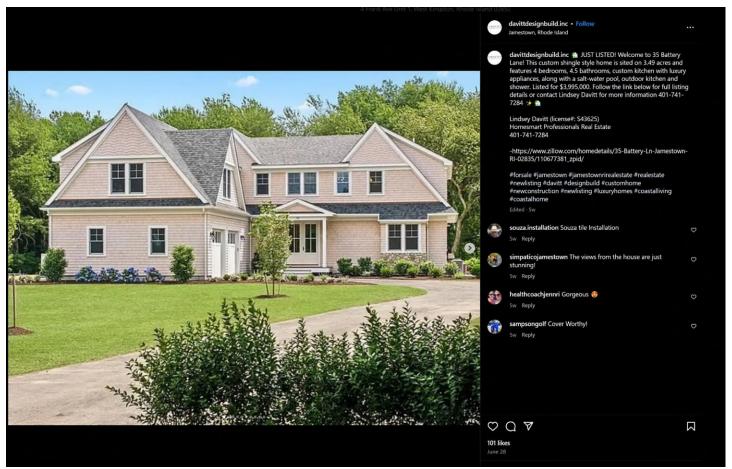
DAVITT



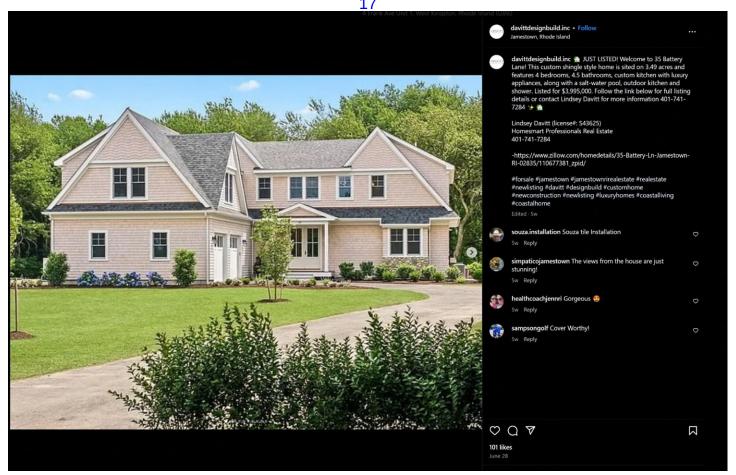
ATESA



DAVITT INSTAGRAM



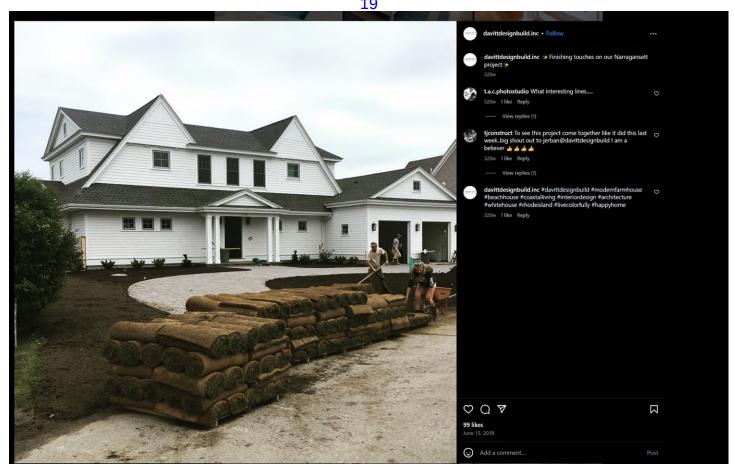
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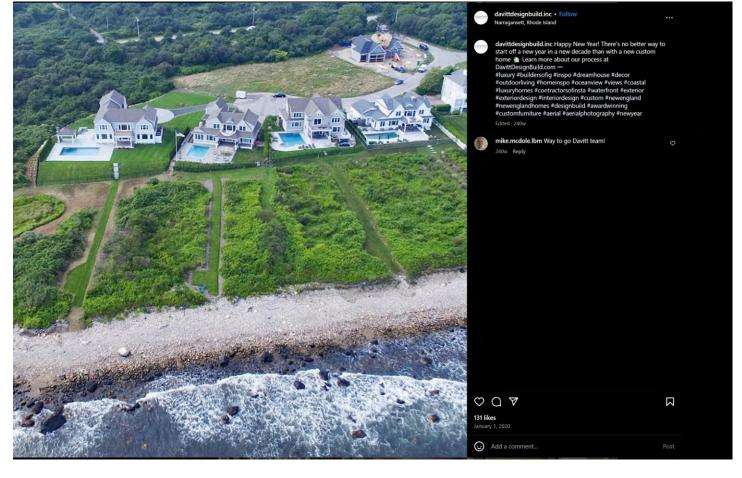


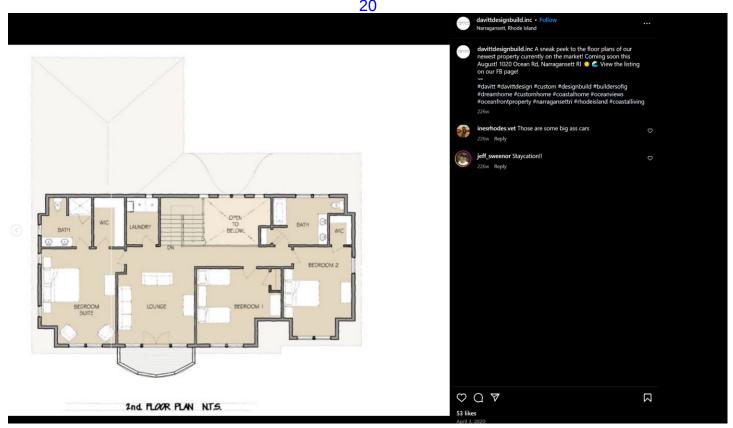
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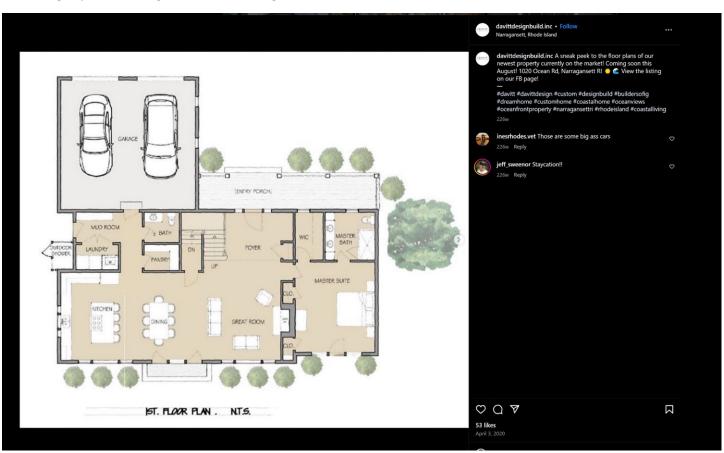
Marketing using same house for a home in Middletown RI



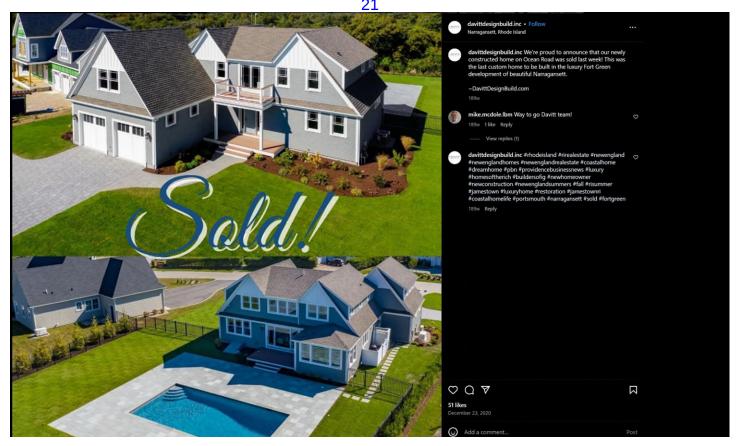




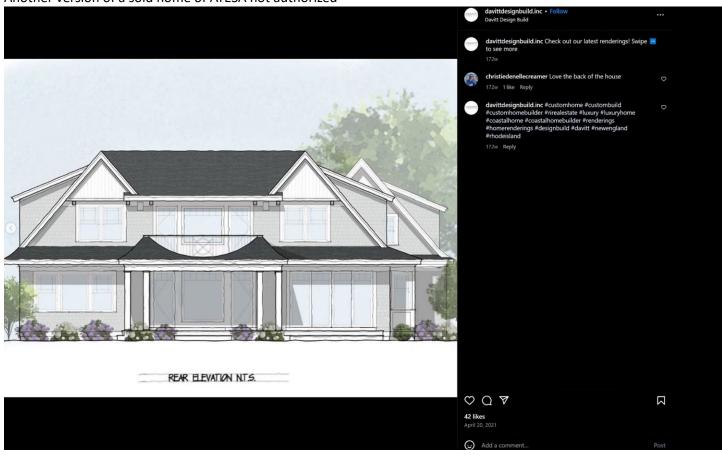
Renderings by ATESA being used for marketing

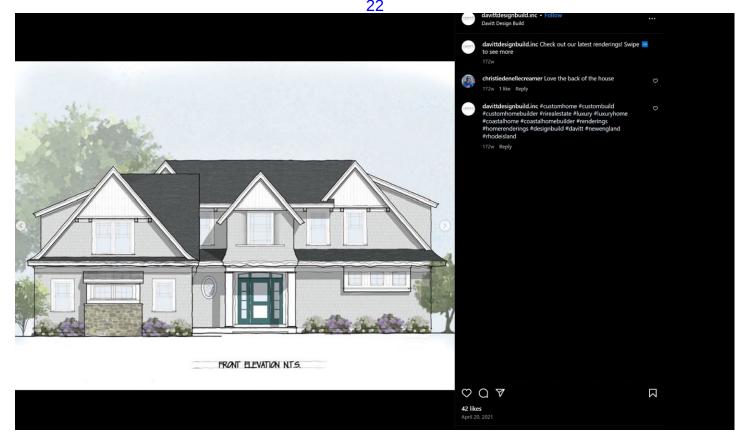


Renderings by ATESA being used for marketing

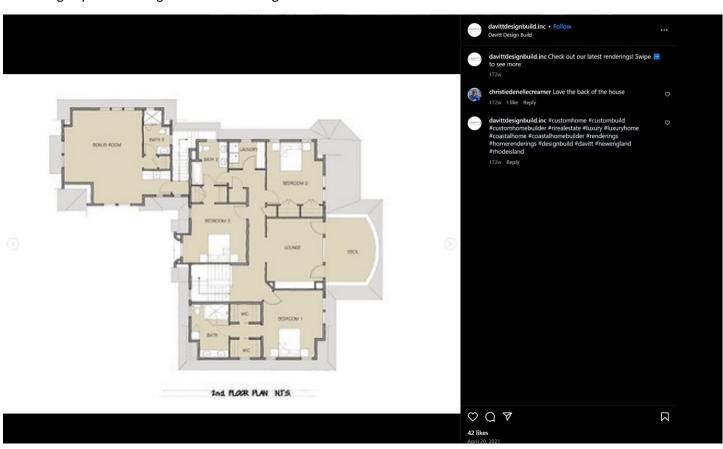


Another version of a sold home of ATESA not authorized

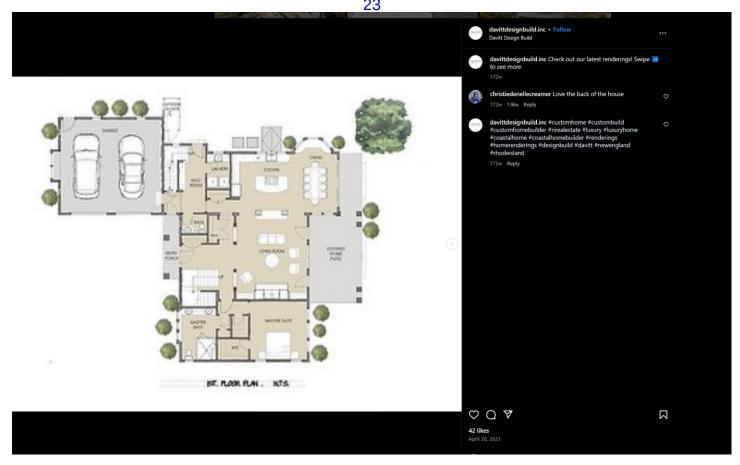




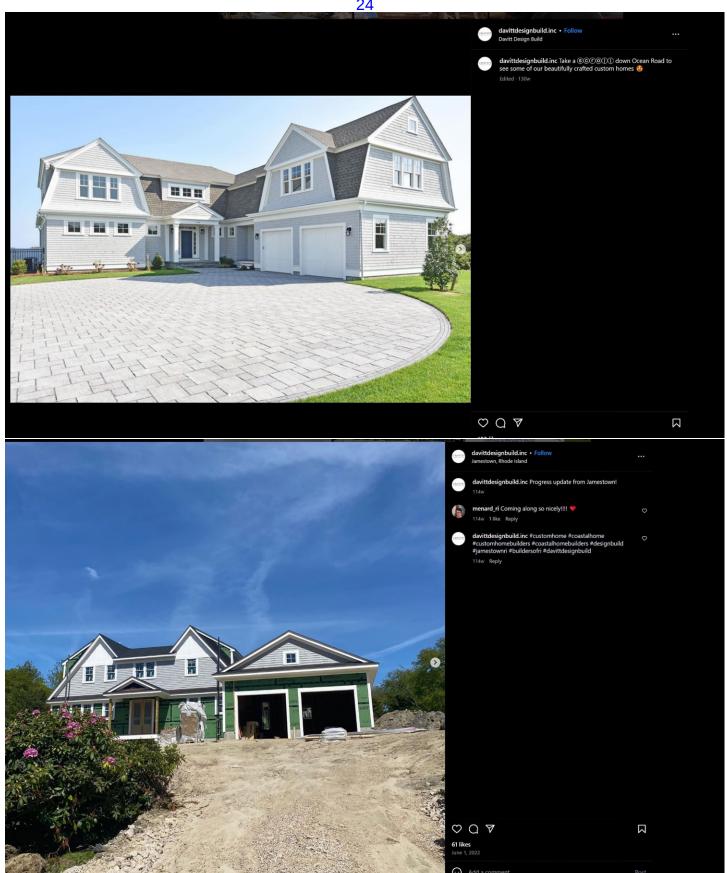
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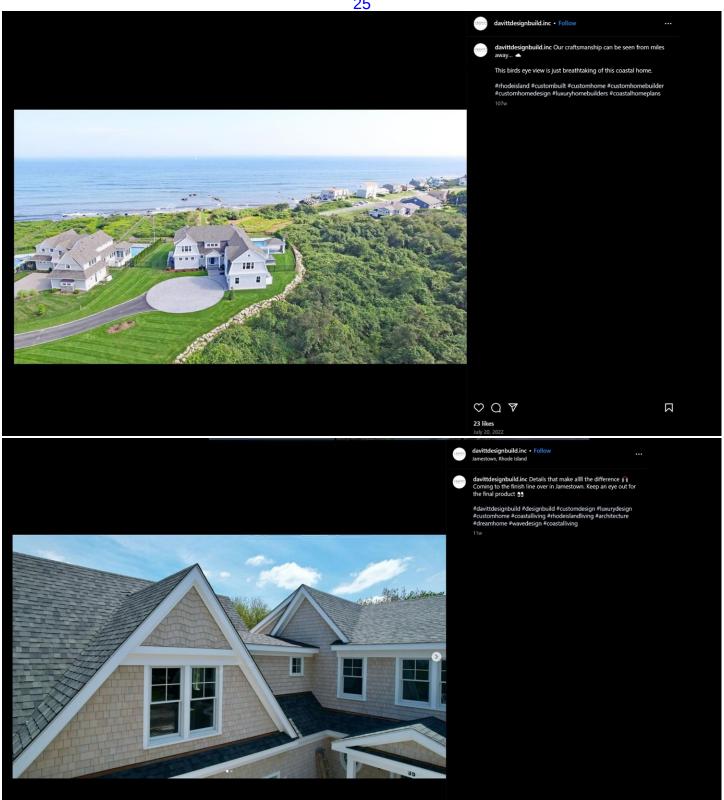
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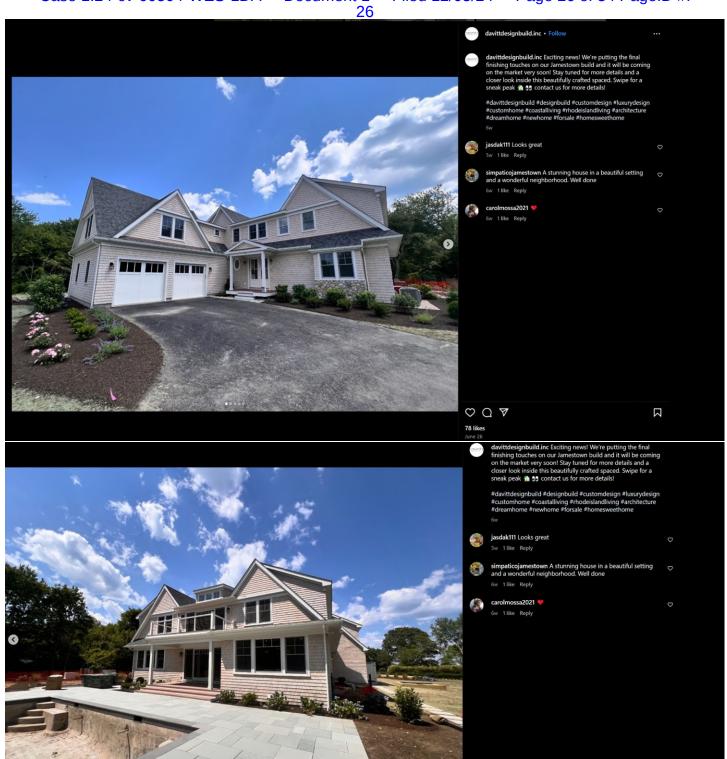


Renderings by ATESA being used for marketing



Built IN Jamestown RI – not sold, possible for his daughter I believe. Carbon copy.









Listed by Lindsey Davitt with Homesmart Professionals Re





0% Down VA Loans for Veterans: Check

How much home can I afford? (Find out!)

Contingent

\$3,750,000

4 bed 4.5 bath 4,090 sqft 3.49 acre lot

35 Battery Ln, Jamestown, RI 02835

Est.\$21,024/mo 🔗

Get pre-approved

Add a commute

Single family

Property type

139 days On Realtor.com

Price per sqft

2 Cars Garage

2024 Year built

Share this home



Veterans: 0% Down VA Loans (Check 2024 Eligibility)

Open houses

⊞ Monthly payment

(§) Connect with a lender

Contact agent

Schedule tour

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	<u>(401) 921-5011</u>				
Broker Location:	Warwick, RI				
Data Source:	StateWide				
Source's Property ID:	1362680				
Data Source Copyright:	©2024 Statewide Multiple I	Listing Service, Inc. All riç	ghts reserved.		

 $\underline{\text{New Construction}} \ \rightarrow \ \underline{\text{Rhode Island}} \ \rightarrow \ \underline{\text{Newport County}} \ \rightarrow \ \underline{\text{Jamestown}} \ \rightarrow \ 35 \ \text{Battery Ln}$

Additional Information About 35 Battery Ln, Jamestown, RI 02835

35 Battery Ln, Jamestown, RI 02835 is a single family home for sale listed on the market for 139 Days. 35 Battery Ln, Jamestown, RI 02835 is in the Beavertail neighborhood. The schools near 35 Battery Ln, include Jamestown School-Lawn, Jamestown School-Melrose and Vally Community School-SC.

Nearby Cities

Narragansett Homes for Sale

Jamestown Homes for Sale

South Kingstown Homes for Sale

See more ✓

02879 Homes for Sale

02835 Homes for Sale

See more ✓

Nearby Neighborhoods

Jamestown Village Homes for Sale

Fifth Ward Homes for Sale

Ocean Drive Homes for Sale

See more ✓

















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> **Registration #:** VAu001534967 **Service Request #:** 1-14289668881

Mail Certificate

A. Tesa Architecture Alec Tesa 9564 Aspen Exbury Ct Parkland, FL 33076 United States

Priority: Special Handling Application Date: September 24, 2024

Correspondent

Organization Name: A. Tesa Architecture

Name: Alec Tesa

Email: alec@atesaarchitecture.com

Telephone: (617)901-5670

Address: 174 Bellevue Ave, Suite 308

Newport, Rhode Island 02840 United States

Rights and Permissions

Organization Name: A. Tesa Architecture

Name: Alec Tesa

Email: alec@atesaarchitecture.com

Telephone: (617)901-5670 **Alt. Phone:** (617)901-5670

Address: 174 Bellevue Ave, Suite 308

Newport, Rhode Island 02840 United States

Certification

Name: Alec Tesa

Date: September 24, 2024

Correspondence: Copyright Office notes:

Yes

Regarding group registration: A group of unpublished works may be registered in the same administrative class under 202.4(c) if the following requirements have been met: 1) All the works must be unpublished; 2) the group may include up to ten works; 3) a title must be provided for each work; 4) all the works must be created by the same author or the same joint authors; 5) the authorship claimed in each work must be the same; and 6) the author and claimant for each

work must be the same person or organization.